

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ZACHARY ALAN SELLECK,

Defendant-Appellant.

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UNPUBLISHED

September 18, 2003

No. 240285

Kalamazoo Circuit Court

LC No. 01-001475-FH

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Defendant<sup>1</sup> appeals as of right his conviction of operating an unlicensed establishment where persons could consume alcohol for consideration, MCL 436.1913(1), entered after a bench trial, and the trial court's prior order denying his motion to suppress the evidence. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The charge against defendant arose out of an incident in which an undercover police officer entered into defendant's residence while a party was in progress and, at defendant's invitation, purchased a drinking cup for \$5. Defendant moved to suppress the evidence on the ground that the search of his residence was unreasonable and was not conducted pursuant to any exception to the warrant requirement. At a hearing, the officer testified that she observed a large group of people gathered behind a residence in a neighborhood known as a college party area. A line had formed at the rear door of the residence, which was standing open. The officer joined the line and entered the residence, where she saw a male dispensing beer into cups from a keg. Defendant approached the officer and sold her a cup for \$5. Defendant did not request her identification. Backup officers arrived and secured the residence. The officer acknowledged that she did not seek or obtain permission from anyone to enter the residence. Defendant waived his *Miranda*<sup>2</sup> rights and admitted that he was selling alcohol without a license.

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<sup>1</sup> At the suppression hearing defendant indicated to the trial court that his middle name is "Arlan." However, the judgment of sentence states that defendant's middle name is "Alan." This Court's procedure is to docket the defendant's name as it appears on the order from which the appeal is taken.

<sup>2</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

Defendant testified that he and his roommates held a party on the night in question and invited friends to attend. He acknowledged that he did not know every person who had been invited by his roommates, but stated that he assumed that persons who arrived at the residence had been invited to the party. Defendant admitted that he sold cups to persons he did not know.

The trial court denied defendant's motion to suppress the evidence. The trial court found that the evidence showed that the door to the residence was standing open, and that a line of persons was waiting to enter the residence. No objective evidence indicated that the occupants of the residence, including defendant, had a subjective expectation of privacy in the residence at that time. The trial court concluded that no search occurred.

Defendant waived his right to a jury trial, and the parties stipulated that for purposes of trial the trial court could use the preliminary examination transcript, police report, and the testimony received at the suppression hearing. The trial court found defendant guilty as charged, and sentenced him to pay fines and costs totaling \$510.

We review a trial court's findings of fact on a motion to suppress for clear error and the ultimate decision de novo. *People v Darwich*, 226 Mich App 635, 637; 575 NW2d 44 (1997).

The initial inquiry in any search and seizure issue is whether a search occurred. *People v Whalen*, 390 Mich 672, 677; 213 NW2d 116 (1973). Not every governmental intrusion constitutes a search. *Id.* The controlling test is whether the police activity violated the defendant's legitimate expectation of privacy. *Id.* In determining whether a person had a legitimate expectation of privacy, a two-part inquiry is employed. *People v Lombardo*, 216 Mich App 500, 504; 549 NW2d 596 (1996). First, a defendant must demonstrate that under the totality of the circumstances he had a legitimate expectation of privacy in the area or object searched. *Id.* Second, the individual's expectation must be one that society accepts as reasonable. *Id.* at 504-505. Whether the expectation exists, both subjectively and objectively, depends on all the circumstances surrounding the intrusion. *People v Parker*, 230 Mich App 337, 340; 584 NW2d 336 (1998).

Defendant argues that the trial court erred by denying his motion to suppress the evidence. We disagree and affirm the trial court's denial of defendant's motion to suppress the evidence and defendant's conviction. Contrary to defendant's assertion, this case does not involve the consent exception to the search warrant requirement. The trial court's decision did not turn on whether defendant gave consent for a search of his residence. Rather, the trial court determined that no search occurred because the evidence showed that under the totality of the circumstances defendant had no legitimate expectation of privacy in the residence at the time of the incident. The evidence showed that the undercover officer was visiting gatherings to determine if alcohol was being dispensed without a license. She entered onto defendant's property after she observed that a large group of persons had gathered at the rear of the residence and that a line had formed at the rear door of the residence. Police entry onto property does not, without more, constitute a search because it does not interfere with the legitimate expectation of privacy. *People v Shankle*, 227 Mich App 690, 693-694; 577 NW2d 471 (1998). The officer observed that the rear door was standing open, and joined the line of persons waiting to gain entry into the residence. She did not ask anyone for permission to enter the residence, and no one told her that she could not enter the residence. When the officer entered the residence defendant sold her a cup of beer for \$5. Defendant maintained that he assumed that persons who

were at the party had been invited to attend; however, he acknowledged that he sold cups to persons he did not know. The evidence supported a finding that on the evening in question, defendant opened his residence to anyone who wished to enter. The officer entered the residence, observed the dispensing of beer from a keg, and purchased a cup from defendant. What a person willingly exposes to the world, even in his own home, is not subject to the protections of the Fourth Amendment. *People v Catania*, 427 Mich 447, 462; 398 NW2d 343 (1986). The trial court's finding that under the totality of the circumstances defendant did not have a legitimate expectation of privacy in the residence on that occasion was not clearly erroneous. The trial court did not err by concluding that a search did not occur and by denying defendant's motion to suppress the evidence.

Affirmed.

/s/ Michael R. Smolenski  
/s/ William B. Murphy  
/s/ Kurtis T. Wilder